

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA06-400

December 20, 2006

KEILIA GAYLE NASH LARIMORE
APPELLANT

AN APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[No. E-2000-708-3]

V.

HON. JAY T. FINCH, JUDGE

DONALD BERNELL NASH, JR.
APPELLEE

AFFIRMED

In an order entered October 24, 2005, the Benton County Circuit Court transferred this domestic-relations case from its court to Los Angeles, California, upon appellee Donald Nash, Jr.'s motion for a change of venue. Appellant Keilia Larimore appeals from that order, contending that the circuit court erred in declining jurisdiction under Ark. Code Ann. § 9-19-207 (Repl. 2002). We affirm.

The parties were divorced on January 10, 2001, and appellant was granted custody of the parties' two minor children. In September 2001, appellee moved to Torrence, California. In June 2003, custody of the minor children was changed from appellant to appellee, and the children moved to California with appellee. In 2005, the parties filed several motions regarding the children, but the only ones relevant to this appeal are

appellant's motion to change custody filed June 9, 2005, and appellee's motion for change of venue filed September 19, 2005.

In an order entered October 24, 2005, the Benton County Circuit Court noted that it could maintain jurisdiction over this case; however, it transferred jurisdiction of the case to Los Angeles, California. The court found that the children had resided in California in excess of two years; that there were 1500 miles between the forum states; that litigating the matter in Arkansas would be expensive because all of the evidence regarding the minor children was in California; that all of the allegations regarding the children's daily care are based upon evidence in California;¹ and that the ability to try the allegations made by appellant would occur more expeditiously in California. Appellant filed a timely notice of appeal on November 21, 2005.

Appellant argues that the circuit court erred in declining jurisdiction and transferring the case to California. The decision of whether to decline jurisdiction is left to the sound discretion of the circuit court and is not to be reversed absent an abuse of that discretion. *Gray v. Gray*, 69 Ark. App. 277, 12 S.W.3d 648 (2000). Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Ark. Code Ann. § 9-19-101 *et seq.* (Repl. 2002), Arkansas has jurisdiction in the present case. However, an Arkansas court that has jurisdiction may decline to exercise jurisdiction upon findings that it is an inconvenient forum under the circumstances and that a court of another jurisdiction is a more appropriate

¹The court noted that it entered a order restraining appellant from taking the children to doctors in Arkansas, keeping appellee in control of the children's medical issues.

forum. Ark. Code Ann. § 9-19-207(a). Arkansas Code Annotated section 9-19-207(b) & (c) provide:

(b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another State to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- (1) whether domestic violence has occurred and is likely to continue in the future and which State could best protect the parties and the child;
- (2) the length of time the child has resided outside this State;
- (3) the distance between the court in this State and the court in the State that would assume jurisdiction;
- (4) the relative financial circumstances of the parties;
- (5) any agreement of the parties as to which State should assume jurisdiction;
- (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
- (7) the ability of the court of each State to decide the issue expeditiously and the procedures necessary to present the evidence; and
- (8) the familiarity of the court of each State with the facts and issues in the pending litigation.

(c) If a court of this State determines that it is an inconvenient forum and that a court of another State is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated State and may impose any other condition the court considers just and proper.

In arguing that the circuit court erred in declining jurisdiction, appellant relies heavily on the connections the children have to Arkansas, including consistent visitation and doctors in the area, and her intent not to present any evidence from any persons in California. However, the statute outlines the factors that are to be considered, and nothing in the record indicates that the circuit court clearly erred in the consideration of those factors.

Appellant relies on *West v. West*, 364 Ark. 73, — S.W.3d — (2005), in support of her

argument that the circuit court should exercise jurisdiction in this case; however, her reliance is misplaced. The issue in *West* was whether Arkansas had exclusive, continuing jurisdiction under UCCJEA to determine a custody modification. The circuit court here found that it probably had jurisdiction in this case, and no party disputes this finding. The issue in the present case, however, is not whether Arkansas courts have jurisdiction but whether Arkansas should continue to exercise that jurisdiction.

Next, appellant contends that the circuit court did not properly evaluate the evidence as to the eight factors found in Ark. Code Ann. § 9-19-207 or stay the proceedings on the condition that proceedings be promptly commenced in another jurisdiction. However, the circuit court clearly analyzed the eight factors and reached a decision based upon those factors. In addition, by transferring jurisdiction to California, the circuit court indicated an intent to discontinue proceedings in Arkansas.

Finally, appellant argues that the circuit court should have considered the hierarchy of jurisdictional preferences under the federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A (2000). When the UCCJEA and the federal PKPA conflict, the federal law controls. *Gray, supra*. Further, the PKPA gives jurisdictional preference to the state with continuing jurisdiction. *See id.*; 28 U.S.C. § 1738A(c). However, a state may exercise jurisdiction and modify a custody determination made in Arkansas if that state has jurisdiction and Arkansas courts either lost jurisdiction or declined to exercise jurisdiction. *See* 28 U.S.C. § 1738A(f); *Gray, supra*. Nothing in the PKPA prevents a circuit court from declining jurisdiction and transferring a case, as the circuit court has done here.

The circuit court did not err in transferring jurisdiction of this case from Arkansas to California. We affirm.

HART and BIRD, JJ., agree.